

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ENVIRONMENTAL DEFENSE FUND,

Plaintiff,

- versus -

ENVIRONMENTAL PROTECTION
AGENCY,

Defendant.

No. 18 Civ. 7085 (AKH)

**STIPULATION AND PROPOSED ORDER SETTING FORTH NEGOTIATED SEARCH
TERMS AND PRODUCTION SCHEDULE FOR FOIA REQUESTS AND ENTERING
CONDITIONAL SCHEDULE FOR DISMISSAL WITH PREJUDICE PURSUANT TO
RULE 41(a)(2)**

WHEREAS, on March 20 and May 4, 2018, Plaintiff Environmental Defense Fund (“EDF”) submitted two requests (the “Requests”) pursuant to the Freedom of Information Act (“FOIA”) to Defendant the Environmental Protection Agency (“EPA” and together with Plaintiff, the “Parties”);

WHEREAS, on August 7, 2018, EDF filed this action challenging EPA’s alleged failure to respond properly to the Requests;

WHEREAS, the Parties have agreed as to the scope of the Requests and a timeline for the production of non-exempt responsive records, and now wish to embody that agreement in this writing;

NOW, THEREFORE, it is hereby **STIPULATED** and **AGREED** between the Parties as follows:

1. The scope of EPA’s search obligation in this action is governed by this Stipulation (the “Stipulated FOIA Requests”), not by the original Requests.

2. Under the Stipulated FOIA Requests, pursuant to the FOIA, EPA will search for and process records responsive to the search terms attached hereto as Exhibit A.

3. EPA will conduct a search for records responsive to the Stipulated FOIA Request from October 1, 2017 up to and including September 4, 2018, and produce responsive records subject to applicable FOIA exemptions according to the following schedule:

- a. EPA has completed its review of approximately the first third of potentially responsive records, as that first third was determined at EPA's sole discretion, and produced information that it determined to be non-exempt from that review on April 30, 2019.
 - b. EPA will complete its review of all remaining potentially responsive records and will produce all remaining non-exempt information no later than July 31, 2019, unless the Parties agree to an extension as necessary.
 - c. EPA will endeavor to review potentially responsive documents in order to make interim productions of non-exempt information, where possible in EPA's sole discretion, before July 31, 2019, unless the Parties agree to an extension as necessary.
4. In the event that any exempt information as determined by EPA is withheld under the FOIA, EPA shall provide Plaintiff with a list of the withholdings and any FOIA exemption asserted, no later than August 30, 2019 or 30 calendar days after its final production.
5. This action is stayed pending the search and production schedule set forth in Paragraphs 3 and 4.
6. In the event that EDF disputes the adequacy of EPA's search for responsive records, production of responsive records, or determination of FOIA exempt information, EDF shall first

inform EPA in writing within 30 calendar days after EPA's production of its withholding list, to the attention of undersigned counsel for EPA, of the alleged deficiencies, and EPA shall have 30 days from the date of receipt of said notice to cure the alleged deficiencies, before EDF may seek to lift the stay in the present action.


7. If EDF does not dispute the adequacy of EPA's search for responsive records, production of responsive records, or determination of FOIA exempt information within the time frame described in paragraph 6 above, the Stipulated FOIA Requests shall be deemed completed, and this matter dismissed.

8. The Parties shall provide notice to the Court by letter when the Stipulated FOIA Requests are completed. If EDF does not raise a challenge according to Paragraph 6, this action shall be dismissed with prejudice pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, without costs or fees. If EDF raises a challenge, the Parties' notice to the Court shall provide a briefing schedule should one be necessary.

9. Nothing in this Stipulation and Order, including the fact of its entry, shall be taken by EDF as a concession that it has "substantially prevailed" in this action in whole or in part, as that term is used in 5 U.S.C. § 552(a)(4)(E). In the event EDF challenges EPA's withholding of information, EDF will not seek attorneys' fees and costs incurred in this FOIA action up to the date of this Stipulation. EDF will also limit any future claim of prevailing party status and/or eligibility for the recovery of attorneys' fees and costs to such fees and costs incurred in any actual filing of summary judgment motion, opposition, or reply in this litigation after the processing and review of records described in Paragraphs 1–7.

Dated: New York, New York
July 24, 2019

EARTHJUSTICE
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SO ORDERED.

Dated: New York, New York
July __, 2019

THE HON. ALVIN K. HELLERSTEIN
United States District Judge